IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.931 OF 2005

Chandrahas C.Dayal. ..Petitioner.

V/s.

CFL Capital Financial Services
& Anr. ..Respondents.

Mr.S.V.Marwadi & Sunita Sharma for petitioner.

Mr.D'lima for Respondent No.1.

Mr.U.V. Nikam, APP for State.

CORAM: A.M.KHANWILKAR,J
DATE : NOVEMBER 19, 2005.

P.C. :

1. Heard counsel for the parties.

2. Rule. As short question is raised, rule made returnable forthwith by consent.

3. Mr. D'Lima waives notice for respondent No.1 and Mr. Nikam, APP waives notice for respondent-State.

4. By this petition, it is prayed that Criminal Case No.301/S/2002 filed against the petitioner pending on the file of 11th Court at Kurla, Mumbai be quashed. It is not in dispute that petitioner is Director of the Accused No.1 company. However, the

petitioner is Chartered Accountant by profession. It is his case that he has no concern with the day to day affairs of the company. It is not in dispute that petitioner is not signatory to the cheque. Relying on the recent decision of the Apex Court in the case of **S.M.S.Pharmaceuticals Ltd. V/s.Neeta Bhalla and Anr.. reported in 2005 SCCL.COM 579 and decision of the High Court in Vijay Mallya V/s. State of Maharashtra & Anr. in Criminal Application No.4827 of 2004,** decided on December, 2004, the counsel for the petitioner contends that the criminal action instituted against the petitioner who has been named as Accused No.7 will have to be quashed in so far as the petitioner is concerned. This is so because, the only assertion made in the petition so as to indicate complicity of the petitioner can be discerned from paragraph-3 of the complaint, which reads thus:

> "3. The Accused No.1 is a Company incorporated under the provisions of Companies Act, 1956. The Accused No.2 to 7 are the Directors of the said Accused No.1. Accused No.2 to 7 are responsible for the conduct of Business to the Company, its day to day affairs and administration of the said

Accused."

There is no other allegation in the complaint and the allegation referred to therein are too general and vague, so as to proceed against the petitioner for the alleged offence of dishonour of cheque.

5. Counsel for the respondent No.1 complainant however, contends that there is clear assertion made in the complaint in paragraph-10 that the accused at the time of handing over the post-dated cheques, had irrevocably undertaken to honour the cheques on presentation. However, none of the accused exercised due diligence to prevent the commission of the offence inspite of the notice within the grace period of 15 days from the receipt of the said notice, for which reason, all the accused will have to be proceeded for offence under section 138 read with 141 and 142 of the Negotiable Instruments Act, 1981.

6. Having considered rival submissions and perusing the complaint as filed, I have no hesitation in taking the view that the allegation made in the complaint as against the present petitioner/accused No.7 is concerned, is not sufficient to proceed against the petitioner in law. The legal position has been now reiterated by the Apex Court in the

recent decision in the case of **S.M.S.Pharmaceuticals Ltd.(Supra).** Something more is required to be alleged, so as to indicate complicity of director to proceed for offence under section 138 read with 141 and 142 of the Negotiable Instrument Act. The argument that the petitioner/accused No.7 did not exercise due diligence to prevent commission of offence, as is stated in paragraph-10, also does not commend to me. In the first place, the assertion is too general. In any case, in so far as offence committed by a company, only person who at the time the offence was committed, was incharge of, and was responsible to, the company for the conduct of the business of the company", is deemed to be guilty of the offence. A priori, merely because the person happens to be one of the director of the Company or that he failed to send reply to the statutory notice or for that matter failed to prevent commission of the offence inspite of the notice will be of no avail.

7. Be that as it may, for the legal position stated by the Apex court and this court in the above said decisions, this petition ought to succeed. Accordingly, rule is made absolute.

8. It is made clear that it will be open to the trial court to proceed against the remaining accused 1 to 6 in accordance with the law.